

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 37782 of 2003(W)

PETITIONERS:

1. MARGRET JOSEPH D/O. LATE JOSEPH,
POOVATHINKAL HOUSE, PARATHODU KERALA, EDAKKUNNAM
VILLAGE, KANJIRAPPALLY TALUK, REPRESENTED BY
HER POWER OF ATTORNEY HOLDER JACOB JOSEPH S/O.LATE
JOSEPH, POOVATHINKAL HOUSE, PARATHODU KARA
2. JACOB JOSEPH S/O. LATE JOSEPH,
POOVATHINKAL HOUSE, PARATHODUKARA,
EDAKKUNNAM VILLAGE, KANJIRAPPALLY TALUK.
3. ROY JOSEPH, S/O. LATE JOSEPH,
POOVATHINKAL HOUSE, PARATHODU KARA, EDAKUNNAM
VILLAGE, KANJIRAPPALLY TALUK, REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER OF JACOB JOSEPH
(2ND PETITIONER)

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM

RESPONDENTS:

1. THE DIVISIONAL FOREST OFFICER,
(ASSISTANT CONSERVATOR OF FORESTS)
KALLARKUTTY ROAD, ADIMALY P.O., IDUKKI DISTRICT
2. STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, IDUKKI, PAINAVU.

BY GOVERNMENT PLEADER SMT. SUSEELA R. BHAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 COPY OF JUDGMENT DT. 29-7-1997 IN O.S.267/95 OF MUNSIFF'S COURT, DEVIKULAM.

EXT.P2 AFFIDAVIT AND PETITION DT. 27-8-1997 IN I.A.739/97 IN O.S.267/95.

EXT.P3 ORDER DT. 25-1-2000 IN DO.

EXT.P4 ARGUMENT NOTES DT.15-7-2003 IN C.M.A.138/2000 OF ADDL. DISTRICT COURT,
THODUPUZHA.

EXT.P5 JUDGMENT IN C.M.A.138/2000.

EXT.P6 RECEIPT DT. 4-5-2006.

EXT.P7 E.P.46/2002 IN O.S.267/1995 DT. 25-11-2002.

EXT.P8 COMMISSION REPORT IN E.A.43/02 IN E.P.46/02 DT.29-11-2002.

EXT.P9 JUDGMENT DT. 12-4-2005 IN C.C.207/2003.

EXT.P10 JUDGMENT DT.31-3-2006 IN W.P.C NO.9812/06 OF THIS COURT.

EXT.P11 ORDER DT.14-12-2005 IN E.P.NO.46/02 IN O.S.267/95 OF MUNSIFF COURT,
DEVIKULAM.

RESPONDENTS' EXHIBITS:

EXT.R1(a) TRUE COPY OF O.S.267/95.

EXT.R1(b) DECREE IN O.S. 267/95.

EXT.R1(c) TRUE COPY OF C.M.A.NO.138/2000.

EXT.R1(d) MAHAZAR IN O.R.9/2002 DT.20-11-2002.

EXT.R1(e) JUDGMENT IN O.P.38102/2000 DT.7-11-2003.

EXT.R1(f) ORDER OF DISTRICT COLLECTOR DT. 11-4-1980.

EXT,R1(g) ORDER IN C.M.P.21300/2001 IN O.P.13400/01 DT.17-4-2001.

S. Siri Jagan, J.

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Dated this, the 4th January, 2007.

J U D G M E N T

In this writ petition, the petitioners who are the plaintiffs in O.S.No. 267/1995, challenge Ext. P5 order passed by the District Court in C.M.A. No. 138/2000, which was passed in an appeal filed against Ext. P3 order in I.A.No. 738/1997 filed under Order IX Rule 13 of the Code of Civil Procedure to set aside Ext. P1 ex parte decree passed by the learned Munsiff in the said original suit. Since the defendants, who are the respondents, did not file written statement in the suit, the learned Munsiff proceeded under Order VIII Rule 10 of the CPC and decreed the suit in favour of the petitioners. Against the same, the defendants filed I.A.No. 739/1997 under Order IX Rule 13 to set aside the ex parte decree. By Ext. P3 order, that I.A was dismissed on a finding that the defendants have not shown sufficient cause to set aside the ex parte judgment. The defendants filed C.M.A.No. 138/2000, which resulted in Ext. P5 judgment wherein the learned District Judge found that the defendants have shown sufficient reasons to set aside the ex parte decree and allowed the C.M.A. The said judgment in the C.M.A. is challenged by the petitioners on the ground that no petition under Order IX Rule 13 of the CPC, 1908 would lie against a decree passed under Order VIII Rule 10 of the CPC.

2. The legal position in this regard is settled by a Division Bench of this Court in Manick Peter v. Surendranathan, reported in 1987 (2) KLT 328 wherein a Division Bench of this Court had categorically held that against a decree passed under Order VIII Rule 10 for failure of defendant to file written statement, a petition under Order IX Rule 13 is maintainable. In view of the said Division Bench

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decision, which is binding on me, I do not find any merit in the contentions of the petitioners in this writ petition. Accordingly, the writ petition is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/